

Application Serial No. 09/765,151
Amendment dated August 4, 2004
Reply to Office Action dated May 5, 2004

Conclusion:

For the foregoing reasons, Applicants submit that all claims are patentable and a Notice of Allowance is respectfully requested.

The Commissioner is hereby authorized to charge Deposit Account No. 23-3000 in the amount of \$18.00 for two newly added claims. No additional fee is believed due with this submission. However, if any additional fee or surcharges are deemed due, please charge same or credit any overpayment to Deposit Account No. 23-3000.

The Examiner is invited to contact the undersigned attorney with any questions or remaining issues.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

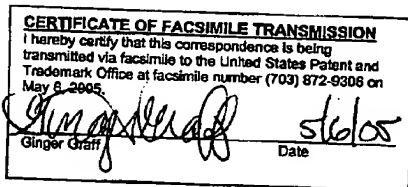
By: 
David E. Jeffries, Reg. No. 46,800

06/14/2005 SDIRETA1 00000020 233000 09765151
01 FC:2202 18.00 DA

Wood, Herron & Evans, L.L.P.
2700 Carew Tower
Cincinnati, OH 45202
(513) 241-2324 (voice)
(513) 241-6234 (facsimile)
K:\PEDKZ\Resp. to 1st OA at RCE.wpd

Adjustment Date: 06/14/2005 SDIRETA1
03728/2005 GWOOTEN 00000001 233000 09765151
02 FC:2202 25.00 CR

-30-



PATENT

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MAY 06 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No: 09/765,151
Applicant: Gilbert R. Gonzales et al.
Filing Date: January 17, 2001
Title: COMBINATION AND METHOD INCLUDING A VISUAL MARKER FOR DETERMINING COMPLIANCE WITH A MEDICATION REGIMEN
Art Unit: 3751
Examiner: Anu Ramana
Conf. No.: 6299
Atty. Docket: PEDI-27 (formerly UNSP-04)

Cincinnati, Ohio 45202

May 6, 2005

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR REFUND OF CLAIM FEE

A response to an Office Action dated May 4, 2004 was filed in the above-identified application on August 4, 2004. That response added two new claims to the application (claims 28 and 29). Thus, the Commissioner was authorized to charge our Deposit Account No. 23-3000 in the amount of \$18.00 for the small entity fee for the addition of two claims (the rate for each additional claim over 20 on August 4, 2004 was \$9.00 per claim).

As can be seen from the fee worksheet attached hereto as Exhibit A, in August, 2004, the U.S. Patent and Trademark Office ("USPTO") calculated the fees

incorrectly in reciting that only 27 claims were in the application. In other words, the USPTO did not calculate the addition of claims 28 and 29. Thus, our deposit account was not charged the \$18.00 we authorized.

Subsequently, a response to Office Action dated November 18, 2004 was filed in the above-identified application on March 18, 2005. That response cancelled one claim (claim 20). As can be seen from the fee worksheet attached hereto as Exhibit B, in March, 2005, the USPTO recalculated the fees, and calculated the addition of two new claims (claims 28 and 29), and subtracted the one cancelled claim (claim 20) for a net gain of one claim.

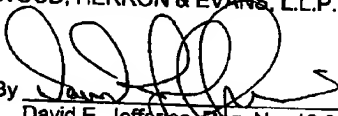
In between the August, 2004 and March, 2005 responses, the USPTO's fee structure had changed to charge \$25.00 for each claim over 20. Thus, the USPTO charged our deposit account \$25.00 for the one additional claim due to the new fee structure. A copy of our Deposit Account Statement is attached hereto as Exhibit C.

It is submitted that these charges are incorrect in that they should have been applied in August of 2004 when they were authorized at the old fee structure (\$9.00 per claim, for a total of \$18.00). Thus, it is believed that the U.S. Patent and Trademark Office has erroneously charged our deposit account \$25.00 for one additional claim under the new fee structure, when we should have been charged \$18.00 for two new claims under the old fee structure. Therefore, Applicants are entitled to a refund in the amount of \$7.00, which equals the amount overcharged, under 37 C.F.R. § 1.26(a).

Please forward a refund check in the amount of \$7.00 to the undersigned at the address below at your earliest possible convenience.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

By 
David E. Jefferies, Reg. No. 46,800

Wood, Herron & Evans, L.L.P.
2700 Carew Tower
Cincinnati, Ohio 45202
(513) 241-2324 (voice)
(513) 421-7269 (facsimile)

WOOD, HERRON & EVANS, L.L.P.

BRUCE TITTEL
DONALD F. FREI
DAVID J. JOSEPHIC
DAVID S. STALLARD
J. ROBERT CHAMBERS
GREGORY J. LUND
KURT L. GROSSMAN
CLEMENT H. LUKEN, JR.
THOMAS J. BURGER
GREGORY F. AHRENS
WAYNE L. JACOBS
KURT A. SUMME
KEVIN G. ROONEY
KEITH R. HAUPT
THEODORE R. REMARKUS
THOMAS W. HUMPHREY
SCOTT A. STINEBRUNER
DAVID H. BRUNDMAN
BEVERLY L. LYMAN, PH.D.
KRISTIL L. DAVIDSON

OF COUNSEL
JOHN D. POFFENBERGER
THOMAS W. FLYNN

2700 CAREW TOWER
441 VINE STREET
CINCINNATI, OHIO 45202-2917
TELEPHONE: 513-241-2324
FACSIMILE: 513-241-6234
EMAIL: info@whepatent.com

PATENT, TRADEMARK, COPYRIGHT
AND UNFAIR COMPETITION LAW
AND RELATED LITIGATION

EDMUND P. WOOD 1823-1958
TRUMAN A. HERRON 1933-1976
EDWARD B. EVANS 1938-1971

JOSEPH R. JORDAN
C. RICHARD EBY
DAVID E. FRITCHARD

J. DWIGHT POFFENBERGER, JR.
KATHRYN E. SMITH
P. ANDREW BLATT, PH.D.
DAVID E. JEFFERIES
WILLIAM R. ALLEN, PH.D.
JOHN PAUL DAVIS
DOUGLAS A. SCHOLER
BRETT A. SCHATZ
DAVID W. DORTON
SARAH OTTE GRABER
STEVEN W. BEHNTEINDL, PH.D.
RANDALL S. JACKSON, JR.

TECHNICAL ADVISORS
HENRY M. LABODA, PH.D.

May 6, 2005

FACSIMILE COVER SHEET

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

Fax: 703-872-9306

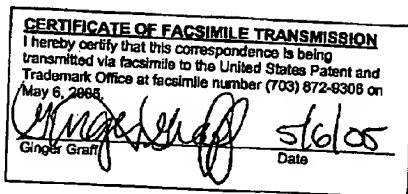
From: David E. Jefferies

Re: **Request for Refund of Claim Fee**
Serial No: 09/765,151
Applicant: Gilbert R. Gonzales et al.
Filing Date: January 17, 2001
Title: COMBINATION AND
METHOD INCLUDING A VISUAL
MARKER FOR DETERMINING
COMPLIANCE WITH A
MEDICATION REGIMEN
Art Unit: 3751
Examiner: Anu Ramana
Conf. No.: 6299
Our Ref: PEDI-27 (formerly UNSP-04)

Pages: 9 (including cover sheet)

MESSAGE/COMMENTS

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Cincinnati, Ohio 45202

May 6, 2005

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR REFUND OF FEE FOR EXTENSION OF TIME

A response to Office Action dated November 18, 2004 was filed in the above-identified application on March 18, 2005. The Commissioner was authorized to charge our Deposit Account No. 23-3000 in the amount of \$60.00 for the small entity fee for a one-month extension of time as set forth in 37 C.F.R. § 1.17(a)(1). However, our Deposit Account No. 23-3000 was charged \$225.00 on March 28, 2005 for the small entity fee for a two-month extension of time.

This response to Office Action, with a one-month extension of time, was originally transmitted and received by the U.S. Patent and Trademark Office on March 18, 2005 (PTO auto reply attached as Exhibit A hereto). Thus, only a one-month

WOOD, HERRON & EVANS, L.L.P.

BRUCE TITTEL
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OF COUNSEL
JOHN D. POFFENBERGER
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441 VINE STREET

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TELEPHONE: 513-241-2324

FACSIMILE: 513-241-6234

EMAIL: info@whepatent.com

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TECHNICAL ADVISORS
HENRY M. LABODA, PH.D.

May 6, 2005

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FACSIMILE COVER SHEET

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

From: David E. Jefferies

Fax: 703-872-9306

Re: Request for Refund of Claim Fee
Serial No: 09/765,151
Applicant: Gilbert R. Gonzales et al.
Filing Date: January 17, 2001
Title: COMBINATION AND
METHOD INCLUDING A VISUAL
MARKER FOR DETERMINING
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Art Unit: 3751
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Pages: 11 (including cover sheet)

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Exhibit A

PATENT APPLICATION FEE DETERMINATION RECORD
 Effective October 1, 2000

Application or Docket Number

09/765151

CLAIMS AS FILED - PART I

	(Column 1)	(Column 2)
TOTAL CLAIMS	27	
FOR	NUMBER FILED	NUMBER EXTRA
TOTAL CHARGEABLE CLAIMS	27 minus 20 =	7
INDEPENDENT CLAIMS	2 minus 3 =	0
MULTIPLE DEPENDENT CLAIM PRESENT <input type="checkbox"/>		

* If the difference in column 1 is less than zero, enter "0" in column 2

CLAIMS AS AMENDED - PART II

	(Column 1)	(Column 2)	(Column 3)
AMENDMENT A	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total	27	27	
Independent	3	3	
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

Best Available Copy

	(Column 1)	(Column 2)	(Column 3)
AMENDMENT B	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total			
Independent			
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

	(Column 1)	(Column 2)	(Column 3)
AMENDMENT C	CLAIMS REMAINING AFTER AMENDMENT	HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total			
Independent			
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

- * If the entry in column 1 is less than the entry in column 2, write "0" in column 3.
- * If the "Highest Number Previously Paid For" in THIS SPACE is less than 20, enter "20."
- * If the "Highest Number Previously Paid For" in THIS SPACE is less than 3, enter "3."
- * The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in column 1.

FORM PTO-876
(Rev. 6/00)Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
U.S. GPO: 2000-460-7000/0103**SMALL ENTITY TYPE**

RATE	FEE
BASIC FEE	355.00
X\$ 9=	
X40=	
+135=	
TOTAL	

OTHER THAN SMALL ENTITY

RATE	FEE
BASIC FEE	710.00
X\$18=	126.00
X80=	
+270=	
TOTAL	336.00

SMALL ENTITY TYPE

RATE	ADDITIONAL FEE
X\$ 9=	
X40=	
+135=	
TOTAL ADDIT. FEE	

OTHER THAN SMALL ENTITY

RATE	ADDITIONAL FEE
X\$18=	
X80=	
+270=	
TOTAL ADDIT. FEE	

RATE	ADDITIONAL FEE
X\$ 9=	
X40=	
+135=	
TOTAL ADDIT. FEE	

RATE	ADDITIONAL FEE
X\$18=	
X80=	
+270=	
TOTAL ADDIT. FEE	

RATE	ADDITIONAL FEE
X\$ 9=	
X40=	
+135=	
TOTAL ADDIT. FEE	

RATE	ADDITIONAL FEE
X\$18=	
X80=	
+270=	
TOTAL ADDIT. FEE	

MAY-06-2005 14:22

513 241 6234

513 241 6234 P.07

Exhibit B

PATENT APPLICATION FEE DETERMINATION RECORD Effective October 1, 2000

Application or Docket Number

09/765151

CLAIMS AS FILED - PART I

	(Column 1)	(Column 2)
TOTAL CLAIMS	27	
FOR	NUMBER FILED	NUMBER EXTRA
TOTAL CHARGEABLE CLAIMS	27 minus 20 =	7
INDEPENDENT CLAIMS	2 minus 3 =	0
MULTIPLE DEPENDENT CLAIM PRESENT <input type="checkbox"/>		

* If the difference in column 1 is less than zero, enter "0" in column 2

CLAIMS AS AMENDED - PART II

	(Column 1)	(Column 2)	(Column 3)
CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total	27	27	
Independent	3	3	
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

SMALL ENTITY TYPE ☐

RATE	FEE
BASIC FEE	355.00
X3 0=	
X40=	
+135=	
TOTAL	

OR OTHER THAN SMALL ENTITY

RATE	FEE
BASIC FEE	710.00
X31B=	124.00
X80=	
+270=	
TOTAL	834.00

SMALL ENTITY TYPE ☐

RATE	ADDITIONAL FEE
X3 0=	
X40=	
+135=	
TOTAL ADDIT. FEE	

OR OTHER THAN SMALL ENTITY

RATE	ADDITIONAL FEE
X31B=	
X80=	
+270=	
TOTAL ADDIT. FEE	

03/24/05 Best Available Copy

	(Column 1)	(Column 2)	(Column 3)
CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total	24	24	01
Independent	3	3	
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

RATE	ADDITIONAL FEE
X3 0=	25
X40=	
+135=	
TOTAL ADDIT. FEE	25

RATE	ADDITIONAL FEE
X31B=	
X80=	
+270=	
TOTAL ADDIT. FEE	

	(Column 1)	(Column 2)	(Column 3)
CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NUMBER PREVIOUSLY PAID FOR	PRESENT EXTRA
Total			
Independent			
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIM <input type="checkbox"/>			

RATE	ADDITIONAL FEE
X3 0=	
X40=	
+135=	
TOTAL ADDIT. FEE	

RATE	ADDITIONAL FEE
X31B=	
X80=	
+270=	
TOTAL ADDIT. FEE	

- * If the entry in column 1 is less than the entry in column 2, enter "0" in column 3.
- * If the "Highest Number Previously Paid For" in THIS SPACE is less than 20, enter "20."
- * If the "Highest Number Previously Paid For" in THIS SPACE is less than 3, enter "3."
- * The "Highest Number Previously Paid For" (Total or Independent) is the highest number found in the appropriate box in columns 1.

FORM PTO-475
(Rev. 6/00)

Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
U.S. GPO: 2000-400-700-000

MAY-06-2005 14:23

513 241 6234

513 241 6234 P.09

Exhibit C

Deposit Account Statement

Requested
Statement
Month: Mar-05
Deposit
Account
Number: 233000

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	ATTORNEY
1-Mar	39	10906940 NOR-1224		8021	\$40.00	KGR
1-Mar	142	10965326 SSIT-97		8204	(\$210.00)	DFF
1-Mar	513	10433922 HAWE-49		8021	\$40.00	DFF
1-Mar	514	10824238 HAWE-51		8021	\$40.00	DFF
2-Mar	55	10459640 XCEN03		8021	\$40.00	WRA
2-Mar	100	28224090 333DES1-107		1112	\$100.00	DFF
2-Mar	101	28224090 333DES1-107		1312	\$130.00	DFF
3-Mar	37	10984029 14CP2		2001	\$245.00	CRE
3-Mar	71	29224281 RVI-671B-107		1112	\$100.00	DFF
3-Mar	72	29224281 RVI-671B-107		1312	\$130.00	DFF
3-Mar	75	28224280 RVI-671C-107		1312	\$100.00	DFF
3-Mar	77	29224280 RVI-671C-107		1464	\$130.00	DFF
3-Mar	184	11068122 104US		1202	\$550.00	WRA
4-Mar	1	9997990 IBM/193		1251	\$110.00	SAS
4-Mar	224	5233663 DSP-3		8021	\$40.00	DFF
4-Mar	226	5426708 DSP-3		8021	\$40.00	DFF
4-Mar	278	10922438 BARN-100A		8021	\$40.00	CRE
4-Mar	332	29224318 RVI-671C-107		2312	\$15.00	DFF
7-Mar	3	76462043 122		7004	(\$150.00)	TRR
7-Mar	341	78800301 114		7001	\$325.00	KLG
8-Mar	5	10501887 KANIA-04		2814	\$88.00	BAL
8-Mar	101	76452967 J&C-235		8003	\$100.00	DSS
9-Mar	9	10718325 WUE-29		1801	\$790.00	TJB
9-Mar	20	10906408 NOR-1224		1201	\$200.00	KGR
9-Mar	29	28224851 107		1112	\$100.00	DFF
9-Mar	30	28224851 107		1312	\$130.00	DFF
9-Mar	344	11072119 BIOP-06US		1011	\$300.00	KGR
9-Mar	345	11072119 BIOP-06US		1111	\$500.00	KGR
9-Mar	346	11072119 BIOP-06US		1311	\$200.00	KGR
9-Mar	347	11072119 BIOP-06US		1201	\$2,000.00	KGR
9-Mar	348	11072119 BIOP-06US		1202	\$1,100.00	KGR
10-Mar	24	10990656 KMC311US		8021	\$40.00	DFF
10-Mar	54	76632380 SATE-02-109		6001	\$750.00	DSS
11-Mar	13	11002164 LABV-9		8021	\$40.00	CRE
11-Mar	60	PCTAUS0506				
11-Mar	60	857 GMED-07WO		1702	\$296.00	KAS

CHARGED \$395.00 IN ELITE

Date	Time	Flight	Class	Fare	Agency
11-Mar	62 857	PCT/US05/08 GMED-07WO	1703	\$384.00	KAS
11-Mar	63 857	PCT/US05/08 GMED-07WO	8007	\$40.00	KAS
14-Mar	2	9878744 DDY / 48	1253	\$960.00	WLJ
14-Mar	3	9878744 DDY / 48	1801	\$770.00	WLJ
14-Mar	4	9878744 DDY / 48	1201	\$172.00	WLJ
14-Mar	33	76632905 FSI-109A	8001	\$40.00	KGR
14-Mar	34	10906912 NOR-1228	1202	\$150.00	KGR
14-Mar	35	10906912 NOR-1228	1311	\$200.00	KGR
14-Mar	36	10906912 NOR-1228	1111	\$500.00	KGR
14-Mar	55	76087963 1219 ROBI-17-	8004	\$300.00	DEP
14-Mar	56	76087963 1219 ROBI-17-	6004	\$450.00	DEP
14-Mar	57	76087963 1219 ROBI-17-	6004	\$150.00	DEP
14-Mar	58	76087963 1219 ROBI-17-	6006	\$100.00	DEP
15-Mar	3	10083001 DDL/19	2201	\$400.00	KRH
18-Mar	1	10452387 DPSI/ 04A	1253	\$1,020.00	DAS
18-Mar	25	10509344	1809	\$730.00	
18-Mar	205	9482032 HILB-682	1504	\$300.00	WLJ
18-Mar	265	1322166 L&P	8521	\$40.00	JDP
18-Mar	266	1325019 L&P-215	8522	\$25.00	JDP
21-Mar	10	10000276 OPME/05	2202	\$675.00	DHB
21-Mar	11	10000276 OPME/05	2201	\$300.00	DHB
21-Mar	600	78590725 FLYA-05	7001	\$325.00	TWH
22-Mar	1	10189060 HILB/456C3	1251	\$120.00	WLJ
22-Mar	2	10189060 HILB/456C3	1814	\$130.00	WLJ
22-Mar	4	10884941 LANT-C02DV	2814	\$65.00	KRH
22-Mar	5	10884941 LANT-C02DV	2201	\$200.00	KRH
22-Mar	191	2185957 MIDTF-392T2	6503	\$15.00	TWF
25-Mar	179	11021198 PMAN/36	2051	\$85.00	BAL
28-Mar	1	9765151 PEDI-27	2252	\$225.00	DEJ
28-Mar	2	9765151 PEDI-27	2202	\$25.00	DEJ
28-Mar	7	60840682 GYTR-27	8021	\$40.00	CHL
30-Mar	1	10245178 POUR-19R	1806	\$180.00	KRH
30-Mar	159	10350612 PPO/11A	2501	\$700.00	DSS

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CHARGED \$55.00 IN ELITE

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